

## **REMARKS**

Claims 1-30, and 48-62 are currently pending. All stand rejected. The applicants request further examination and reconsideration in view of the remarks set forth below.

### **Interview Summary**

On April 7, 2005 the examiner telephoned the attorney of record, Derek J. Westberg. The examiner indicated agreement with the applicants' previous arguments distinguishing the invention from the prior art. The examiner requested that the claims be amended to specify that the ventilation apertures are "light-blocking." The examiner has now apparently reversed course by maintaining the rejections in view of Abraham and Matera and has made the rejections final.

### **Rejections Under 35 U.S.C. § 103(a)**

Claims 1-30 and 48-62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 6,450,639 issued to Abraham (hereinafter referred to as "Abraham") in view of U.S. Patent Application Publication Number 2004/0017540 filed by Matera (hereinafter referred to as "Matera").

Applicants respectfully traverse the rejection in view of Matera and Abraham. The present invention as recited in claim 1 is directed towards eyewear comprising a frame having a brow web extending approximately horizontally from a top portion of the frame and one or more lenses mounted to the frame. The brow web includes at least one ventilation aperture having an internal side that is substantially sloped with respect to a top surface of the brow web.

Abraham is directed towards fog-free protective glasses, goggles and non-protective glasses. Abraham, Title. Abraham discloses a first embodiment of eyewear having spacer members attached to a frame that provide spaces for air to circulate in the eye area. Abraham, column 6, lines 51-53. The spacing members come in direct contact with the wearer's face and hold the eyewear away from the wearer's face. Abraham, column 5, lines 23-27. Abraham also discloses a second embodiment of eyewear that includes horizontal apertures in the forward facing portion of the eyewear. See Abraham, Figure 2.

Matera is directed towards anti-fogging sport glasses. Matera, Title. The sport glasses include an upper lens rim that extends rearwardly towards the eye and that defines a plurality of apertures. Matera, paragraph 22, lines 1-7. The apertures are in a substantially vertical orientation that is “approximately at an angle  $\theta$  of 70-90° from the horizontal viewing angle H.” Matera, paragraph 24, lines 9-11.

The combination of Abraham's first embodiment and Matera does not disclose the invention recited in claim 1. This is because air flows around the scalloped edge of the eyewear of the first embodiment of Abraham while Matera discloses substantially vertical apertures which pass through the frame of Matera. Thus, even if these references were properly combinable, such a combination would result in eyewear having a scalloped edge and substantially vertical apertures. In contrast, the applicants' claim 1 requires at least one ventilation aperture having an internal side that is substantially sloped with respect to a top surface of the brow web.

The second embodiment disclosed by Abraham includes horizontal ventilation apertures on the front portion of the eyewear. Abraham, figure 2. Matera specifically states that horizontal openings are not used. Matera, paragraph 24, lines 7-9. Therefore, Matera teaches away from making such a combination. However, even if these references were properly combinable, such a combination would result in eyewear having both horizontal ventilation apertures and vertical ventilation apertures. In contrast, the applicants' claim 1 requires at least one ventilation aperture having an internal side that is substantially sloped with respect to a top surface of the brow web.

Therefore, an individual skilled in the art would not combine Abraham with Matera to achieve the applicants' invention as recited in claim 1. And, even if combined, these references do not disclose all of the limitations of applicants' claim 1. For at least these reasons, claim 1 is allowable in view of the cited art.

Furthermore, the applicants' invention has advantages over Matera and Abraham, taken singly or in combination. The applicants' inventive light-blocking apertures are substantially sloped while Matera's apertures are substantially vertical. Thus, the applicants' apertures are more effective at blocking light while also permitting larger apertures which allow for greater air flow and the material surrounding the applicants' apertures can be thinner allowing for lighter,

more cost-effective, and more presentable eyewear. In contrast, in order to effectively block light, Matera's apertures have to be longer and narrower than the applicants' apertures which tends to impede airflow and requires a thicker frame material. These are additional reasons why claim 1 is allowable.

Claims 2-18 are allowable at least because they are dependent upon allowable base claim 1. Claim 19 recites apertures for each lens arranged substantially equally-spaced in a row and wherein each aperture has parallel sides and a center axis that is substantially sloped with respect to a top surface of the brow web. Claim 19 is allowable over Matera and Abraham, taken singly or in combination, at least because they do not disclose apertures having a center axis that is substantially sloped with respect to a top surface of the brow web. Claims 20-30 are allowable at least because they are dependent from an allowable base claim 19.

Claim 48 recites a plurality of ventilation apertures in the brow web and wherein each aperture has parallel sides and a center axis that is substantially sloped with respect to a top surface of the brow web. Claim 48 is allowable over Matera and Abraham, taken singly or in combination, at least because they do not disclose apertures having a center axis that is substantially sloped with respect to a top surface of the brow web. Claim 49 is allowable at least because it is dependent from an allowable base claim 48.

Claim 50 recites a brow web including a top surface that is substantially horizontal while being worn, and an angle separating the top surface and an internal side of an aperture being approximately forty-five degrees or less. The range of 70-90 degrees disclosed by Matera does not include forty-five degrees, is not abutting forty-five degrees and is nowhere near forty-five degrees. Thus, claim 50 is allowable over Matera and Abraham, taken singly or in combination, at least because they do not disclose an internal side of an aperture being approximately forty-five degrees or less. Claims 51-62 are allowable at least because they are dependent from an allowable base claim 50.

Regarding claim 50, the applicants previously explained:

The examiner has given no evidence to show where either Matera or Abraham disclose apertures having an angle separating the top surface of the brow web and the internal side of an aperture is approximately forty-five degrees or less.

The examiner disagreed with this explanation by asserting that the invention recited in claim 50 is disclosed by Matera's statement in paragraph 24, lines 16-19:

In a most preferred embodiment, the apertures 50 are angled such that the axis of the opening angles downwardly away from the eye

However, the examiner is taking the above statement out of context. The next few words of the sentence cited by the examiner are "as shown in figure 8." Figure 8 shows apertures with a substantially vertical orientation. Furthermore, Matera states that the apertures have a vertical orientation, and that the angle of that orientation is between 70 and 90°. Matera, paragraph 24, lines 7-9. Thus, the angle referred to in paragraph 24 of Matera is the substantially vertical angle  $\theta$  of 70-90°. Nowhere does Matera suggest any other orientation of the apertures. As stated in section 2141.02 of the Manual of Patent Examining Procedure, "prior art must be considered in its entirety, including disclosures that teach away from the claims." Thus, the examiner cannot attempt to show that the prior art discloses the applicant's invention by engaging in selective editing of a statement made by Matera.

In the final rejection, the examiner appears to have taken an argument which was directed at claim 50 and attempted to apply it to all of the currently pending claims. The applicants respectfully point out that each claim needs to be considered independently of the others. Therefore, the applicants respectfully request that the examiner provide specific reasons for each claim being rejected or withdraw the rejection.

The examiner further implied that there is an additional reason for rejecting claims 6, 23 and 50. Claims 6, 23 and 50 recite a limitation on the angle separating a top surface of the brow web and an internal side of the ventilation aperture, namely that it is approximately forty-five degrees or less. The examiner stated that this feature "is an engineering design choice" though the examiner did not provide a basis for this assertion. The applicants respectfully disagree with this reasoning and respectfully request that the examiner either provide evidence in support of this statement or withdraw the rejection.

In view of the above, the applicants respectfully submit that all of the pending claims are now allowable. Allowance at an early date would be greatly appreciated. Should any issues

remain, the examiner is encouraged to telephone the undersigned at (408) 293-9000 to discuss the same so that any outstanding issues may be expeditiously resolved.

Law Offices of Derek J. Westberg

Dated: June 14, 2005

A handwritten signature in dark ink, appearing to read 'Derek J. Westberg', written over a horizontal line.

Derek J. WESTBERG (Reg. No. 40,872)